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No. 92-1875

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

JACK PARDUE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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BEST AVAILABLE COPY

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Petitioner contends that the court of appeals erred in reversing the order of the district court granting petitioner's post-verdict motion for judgment of acquittal.

1. On October 3, 1990, petitioner was indicted along with David Pardue, his son, and Michel, his grandson, by a grand jury sitting in the Western District of Arkansas. They were charged with conspiracy to commit murder-for-hire, in violation of 18 U.S.C. 371; and two counts of using a facility of interstate commerce in connection with the murder-for-hire scheme, in violation of 18 U.S.C. 1958(a). Following a jury trial, petitioner and Michel Pardue were found guilty on the conspiracy count, and one of the two substantive counts. The jury found David Pardue guilty as charged.

On May 13, 1991, the trial court granted a post-verdict judgment of acquittal for petitioner and Michel Pardue. Pet. App. A34-A77. The court concluded that petitioner was entrapped as a matter of law and that due process required acquittal of petitioner based on outrageous government conduct.

The court of appeals reversed. Pet. App. A3-A16. The court held that the evidence was sufficient to allow the jury to find petitioner guilty and to decide whether he was entrapped, precluding the trial court from ruling that petitioner was entrapped as a matter of law. The court also concluded that due process did not require petitioner's acquittal. The dissenting judge concluded that the district judge was correct in finding that petitioner was entrapped as a matter of law.

Petitioner contends (Pet. 14-17) that he was entrapped into committing crimes to which he was not predisposed. Petitioner also contends (Pet. 17-21) that the government engaged in outrageous conduct that barred his conviction under the Due Process Clause. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision is not a final judgment against petitioner. After imposition of sentence by the district court, petitioner can again take an appeal to the court of appeals raising any issues that may be available to him and preserving the claims he has raised here. If the court of appeals affirms the final judgment against him, petitioner will then be able to present his current contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari. Accordingly, review by this

Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

JUNE 1993

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* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.